

Message Text

LIMITED OFFICIAL USE

PAGE 01 BUENOS 00413 171555Z

71

ACTION EB-11

INFO OCT-01 ARA-16 ISO-00 AID-20 CIAE-00 COME-00 FRB-02

INR-10 NSAE-00 RSC-01 TRSE-00 XMB-07 OPIC-12 SPC-03

CIEP-02 LAB-06 SIL-01 OMB-01 NSC-10 SS-20 STR-08

CEA-02 L-03 H-03 IGA-02 TAR-02 DRC-01 /144 W

----- 001717

R 171435Z JAN 74

FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC 5004

LIMITED OFFICIAL USE BUENOS AIRES 0413

E.O. 11652: N/A

TAGS: ETRD, ECON, EIND, CU, AR

SUBJ: INDUSTRIAL PROPERTY: EXISTING LICENSING AGREEMENTS

EXTENDED

REF: BA 8948 12/10/73

1. SUMMARY: PRESIDENTIAL DECREE HAS EXTENDED DEADLINE FIXED BY 1971 LAW ON REGISTRATION OF LICENSING AND TECHNOLOGY AGREEMENTS TO MODIFY THOSE AGREEMENTS CONCLUDED BEFORE LAW ENERED INTO FORCE. EXTENSION AVERTED POSSIBLE TERMINATION OF MANY AGREEMENTS BECAUSE OF FAILURE OFPARTIES INVOLVED TO SUBMIT NECESSARY MODIFICATIONS BY PREVIOUS DEADLINE, DEC 31, 1973, DUE TO UNCERTAINTY ABOUT EXTENT OF CHANGES REQUEIRED. GOA ONLY RECENTLY PUBLISHED GUIDELINES ESTABLISHING MINIMUM CONDITIONS FOR MODIFYING AGREEMENTS. END SUMMARY.

2. 1972 LAW ON REGISTRATION OF LICENSING AND TECHNOLOGY AGREE- MENTS REQUIRED THAT PRE-EXISTING AGREEMENTS BE MODIFIED OR ADAPTED TO CONFORM TO LAW'S REQUIREMENTS BY DEC 31, 1973 OR LOSE THEIR LEGAL STATUS. DECRESS OF DEC 27 EXTENDS VALIDITY OF SUCH AGREEMENTS ONE YEAR TO DEC 31, 1974, PROVIDED INTERESTED PARTIES COMPLY WITH ADDITIONAL REGISTRATION PROCEDURES

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BUENOS 00413 171555Z

BY MAR 31 AND SUBMIT AGREEMENT MODIFYING ORIGINAL CONTRACT TO

REGISTRATION AUTHORITIES, THE NATIONAL INSTITUTE FOR INDUSTRIAL TECHNOLOGY (INTI), BY JUN 31. INTI WILL HAVE REMAINDER OF YEAR TO REVIEW MODIFYING AGREEMENTS, WORK OUT ADJUSTMENTS, AND ACCEPT THEM FOR FINAL REGISTRATION. DECREE PROVIDES THAT MODIFYING AGREEMENTS WILL NOT TAKE EFFECT UNTIL JAN 1 1975, UNLESS OTHERWISE STIPULATED IN AGREEMENT.

3. EARLIER IN DEC, MIN OF ECON PUBLISHED LONG-AWAITED GUIDELINES ESTABLISHING LIST OF MINIMUM CONDITIONS WHICH MUST BE MET BY MODIFYING AGREEMENTS. 1971 LAW SETS FORTH NUMBER OF GENERALLY WORDED NEGATIVE CONDITIONS EACH OF WHICH FORMS SUFFICIENT, BUT NOT NECESSARY, GROUNDS FOR INTI TO REFUSE TO APPROVE AND REGISTER AGREEMENT. NEW GUIDELINES ARE FAR MORE SPECIFIC, REQUIRING THAT MODIFYING AGREEMENTS SUBMITTED TO INTI FOR REVIEW MUST, AT A MINIMUM, ANNULL ANY PROVISIONS IN ORIGINAL LICENSING AGREEMENT WHICH:

- A. PROHIBIT EXPORT OF LICENSED PRODUCT, EXCEPT WHEN PROHIBITION PROTECTS LICENSOR'S EXCLUSIVE MANUFACTURING AGREEMENT IN ANOTHER COUNTRY.
 - B. REQUIRE LICENSEE TO ASSIGN RIGHTS TO LOCALLY DEVELOPED INVENTION OR IMPROVEMENTS.
 - C. REQUIRE LICENSEE TO PURCHASE EQUIPMENT OR GOODS IN SPECIFIC COUNTRY.
 - D. IMPOSE SALE PRICE ON ARGENTINE PRODUCTION.
 - E. TRANSFER JURISDICTION OVER DISPUTES ARISING FROM AGREEMENT TO A FOREIGN COURT.
 - F. REQUIRE ROYALTY PAYMENT HIGHER THAN 5 PERCENT OF NET SALES PRICE OF LICENSED PRODUCT.
- RESOLUTION SETTING FORTH ABOVE GUIDELINES RESERVES RIGHT TO REQUIRE ADDITIONAL CHANGES AS NECESSARY.

4. EXTENSION OF VALIDITY OF EXISTING AGREEMENTS REPRESENTS LAST MINUTE GOA RECOGNITION THAT ORIGINAL DEADLINE CREATING MAJOR PROBLEMS FOR ALL CONCERNED. MANY FIRMS WERE HOLDING MODIFYING AGREEMENTS UNTIL LAST DAY; OTHERS PROBABLY WOULD NOT HAVE MET DEADLINE AT ALL. DELAYS DUE PRIMARILY TO LACK OF OFFICIAL INDICATION OF WHAT WOULD CONSTITUTE ACCEPTABLE AGREEMENT AND UNWILLINGNESS OF MANY LICENSORS TO RELINQUISH AS MUCH CONTROL AS BROAD PROVISIONS OF 1971 LAW SEEMED TO REQUIRE. RESULTING UNCERTAINTY NOT ONLY HINDERED INTERESTED PARTIES LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BUENOS 00413 171555Z

IN MODIFYING THEIR EXISTING AGREEMENTS, BUT ALSO UNDERSTOOD TO HAVE SLOWED INTI'S REVIEW OF THOSE AGREEMENTS ACTUALLY SUBMITTED. THUS, LEGAL STATUS MOST AGREEMENTS WOULD HAVE BEEN QUESTIONABLE AFTER JAN 1, WITH ORIGINAL AGREEMENT LEGALLY TERMINATED AND MODIFYING AGREEMENT, IF SUBMITTED, STILL UNDER REVIEW. LEGAL AND PRACTICAL CONSEQUENCES WOULD HAVE BEEN GREATEST FOR ARGENTINE FIRMS USING FOREIGN TECHNOLOGY OR TRADE-MARKS UNDER LICENSE, SINCE LOCAL SUBSIDIARIES OF FOREIGN FIRMS

ARE MUCH LESS DEPENDENT ON FORMAL LICENSING AGREEMENTS.

5. ONE YEAR EXTENSION, COMBINED WITH ISSUANCE OF OFFICIAL GUIDELINES, OFFERS FURTHER OPPORTUNITY TO REWORK AGREEMENT UNDER WHAT APPEAR TO BE MORE FAVORABLE CIRCUMSTANCES FOR FOREIGN LICENSOR. WE UNDERSTAND NEW REGISTRATION PROCEDURES TO BE COMPLETED BY MAR 31 WILL CONSIST OF SIGNED STATEMENT BY INTERESTED PARTIES OF THEIR INTENTION TO ADAPT EXISTING LICENSING AGREEMENT TO GUIDELINES AND TO VOID, DURING 1974, ANY PROVISIONS IN THAT AGREEMENT CONTRARY TO THESE GUIDELINES.

6. GUIDELINES THEMSELVES APPEAR FAR LESS RESTRICTIVE THAN HAD BEEN EXPECTED IN VIEW OF BROAD TERMS OF LAW. THE EXCEPTION PERMITTING CONTINUED LIMITATION ON EXPORTS OF
E E E E E E E

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENTS, FOREIGN INVESTMENTS, COMMERCIAL LAW, CONTRACTS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 JAN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BUENOS00413
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: BUENOS AIRES
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740136/aaaabhj.tel
Line Count: 124
Locator: TEXT ON-LINE
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: BA 8948 12/10/73
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags: ANOMALY
Review Date: 06 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <06 SEP 2002 by cunninfx>; APPROVED <10-Sep-2002 by MorefiRH>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: INDUSTRIAL PROPERTY: EXISTING LICENSING AGREEMENTS EXTENDED
TAGS: ETRD, ECON, EIND, CU, AR
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005